

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES C. BRYANT
Claimant

VS.

**TAP ENTERPRISES, INC. d/b/a/
CUMMINS INDUSTRIAL TOOLS**
Respondent
Self-Insured

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Docket No. 1,017,743

ORDER

Respondent requests review of the September 30, 2004 preliminary hearing Order entered by Special Administrative Law Judge Marvin Appling.

ISSUES

Judge Appling awarded claimant preliminary benefits including temporary total disability compensation and medical treatment.

Respondent argues that due to the different explanations claimant has given for his injury and the variances in the descriptions of his work-related accident, claimant's testimony is not credible. As a result, claimant has failed to prove that he met with personal injury by accident arising out of and in the course of his employment with respondent.

Conversely, claimant contends that his testimony is consistent and that "[t]here is not a shred of evidence provided to the court by the respondent as to alternative causation and slight inconsistencies in medical notes from three different physicians taken at different time[s] should not be used to penalize an injured worker who has steadfastly maintained a consistent history since his initial date of accident."¹ Accordingly, claimant requests that Judge Appling's Order be affirmed in all respects.

¹ Brief of Claimant/Appellee at 5 (filed Nov. 4, 2004).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On December 19, 2003, claimant was lining up an air-compressor to bolt it on to an engine block when he slipped off the rear tire of the truck and fell approximately five (5) to six (6) feet to the ground, injuring his back. Claimant immediately notified his supervisor, Mr. Rick Buchanan, of his accident and his injuries. Mr. Buchanan attempted to call respondent's home office but it was closed for the Christmas holiday. As a result, medical treatment was not provided. Mr. Buchanan instructed claimant not to do any lifting until he was able to return home to Colorado and obtain medical treatment.

Thereafter, claimant continued to experience problems obtaining authorized medical treatment from respondent and therefore went to the hospital emergency room on his own. Eventually, respondent authorized claimant to see Joseph McGarry, M.D., whom he first saw on January 21, 2004. In the meantime, claimant had been seen by Dr. McGarry's physician assistant and an MRI was ordered. That test was conducted on December 31, 2003, and showed a disc herniation at L5-S1 and probable disc protrusion at L2-3 with spinal stenosis.

During the preliminary hearing claimant was asked about the apparent inconsistent statements and medical histories contained in the various medical records. Claimant's explanation was plausible and credible. The Appeals Board finds claimant has met his burden of proving that he suffered personal injury by accident arising out of and in the course of his employment on the date alleged and that his current back problems are attributable to that work-related accident.

WHEREFORE, it is the finding, decision and order of the Board that the Order entered by Special Administrative Law Judge Marvin Appling dated September 30, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February 2005.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
John David Jurcyk, Attorney for Respondent
Marvin Appling, Special Administrative Law Judge

JAMES C. BRYANT

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Paula S. Greathouse, Workers Compensation Director